

89-239

No. 89-\_\_

Supreme Court, U.S.

FILED

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JOSEPH F. SPANICL, JR.  
CLERK

In The  
Supreme Court of the United States  
October Term, 1989

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WILLIAM JOSEPH DOYLE,

*Petitioner,*

vs.

UNITED STATES OF AMERICA,

*Respondent.*

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On Writ Of Certiorari To The  
United States Court Of  
Appeals For The Ninth Circuit

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PETITION FOR WRIT OF CERTIORARI

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MARVIN S. CAHN  
1256 Market Street  
San Francisco, CA 94102  
(415) 864-3131

*Attorney for Petitioner*



## QUESTIONS PRESENTED

May information contained in the Narcotics and Dangerous Drug Information System, (commonly referred to as NADDIS), which has not been independently verified serve as sufficient corroboration of an informant's tip so as to justify a warrantless search of a vehicle under the Fourth Amendment of the United States Constitution?

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## OPINION BELOW

The opinion of the United States Court of Appeals, for the Ninth Circuit, together with its corrected opinion and denial of Petition for Rehearing are attached hereto as the Appendix.

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## STATEMENT OF JURISDICTION

The opinion of the United States Court of Appeals for the Ninth Circuit was entered on December 28, 1988. The Court entered an amended opinion on March 15, 1989 and entered its order denying the Petition for Rehearing and rejecting the suggestion for rehearing en banc on April 25, 1989. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

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## CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides:

"The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the persons or things to be seized."

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## STATEMENT OF THE CASE

On April 14, 1987, William Joseph Doyle was arrested in Tucson, Arizona after his vehicle was stopped and

searched by Agent Randy Huling of the United States Drug Enforcement Agency. A warrantless search of the vehicle resulted in the finding of a quantity of marijuana.

The United States Government filed a two-count indictment on May 13, 1987 charging Mr. Doyle and Co-Defendant John Henry Drum. Title 18 U.S.C. § 3231 conferred jurisdiction on the District Court because the indictment charged a violation of 21 U.S.C. § 841(A). Count One charged violations of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(vii), possession of approximately 380 pounds of marijuana with intent to distribute, and 18 U.S.C. § 2, aiding and abetting. Count Two charged conspiracy to distribute marijuana in violation of 21 U.S.C. §§ 841(A)(1) and 841(b)(1)(B)(vii).

The stop of Doyle's vehicle was a result of information obtained by Agent Huling from a confidential informant. In 1984 an informant allegedly learned that John Henry Drum was maintaining a stash house at 2029 East Greenlee, Tucson, Arizona. This informant contacted Agent Huling in April, 1986 and provided him with the information that Mr. Drum was from San Ignacio, Mexico, was involved in air and truck smuggling of marijuana, that he operated a stash house at 2029 East Greenlee and had numerous vehicles from the Eastern and Midwestern United States, including Montana, arrive at 2029 East Greenlee, Tucson, Arizona.

Agent Huling, upon learning of the informant's tip, ran Mr. Drum's name through the Narcotics and Dangerous Drug Information System, (NADDIS). According to NADDIS, a person named John Drum lived in San

Ignacio, Mexico and was involved in air smuggling and transporting cocaine into the United States.

Agent Huling never attempted to determine the source of the information in NADDIS. Similarly, Agent Huling had no knowledge of the accuracy of the information, the time frame in which it had been submitted or even if the information was about the same John Henry Drum.

Agent Huling attempted to verify information given to him by doing independent checks. However, utilities checks, drive-bys and three or four surveillances failed to confirm any of the information regarding the activities of Mr. Drum which had been provided by the informant. At the time of his arrest on April 14, 1987, Agent Huling had been provided no information on Mr. Doyle.

On April 14, 1987, while conducting a surveillance on the Greenlee address, an agent saw boxes being loaded into a white pick-up truck. As a result of this observance, Agent Huling decided to stop the vehicle being driven by Mr. Doyle after it left the Greenlee residence. Agent Huling admits at the time of his stop he had no specific information concerning marijuana being at the Greenlee address or any information concerning a drug deal at the Greenlee address.

As a result of the foregoing facts, Defendant Doyle filed a Motion to Suppress on June 15, 1987. An evidentiary hearing was held on July 27, 1987 and the U.S. District Court, Hon. Alfredo Marquez entered an order denying the Motion on August 5, 1987.

Thereafter, on August 20, 1987, Mr. Doyle entered a conditional plea to Count One of the indictment pursuant to Federal Rules of Criminal Procedure 11(A)(2). The conditional plea was accepted on October 1, 1987 and Mr. Doyle was sentenced to a five year non-parolable term of imprisonment, a five-year special parole term, a \$16,000 fine and a \$50 special assessment.

On October 1, 1987, Mr. Doyle filed a timely Notice of Appeal pursuant to the Federal Rules of Appellate Procedure, 4(b). Thereafter, the United States Court of Appeals for the Ninth Circuit, entered its opinions affirming the United States District Court and denying Mr. Doyle's Petition for Rehearing.

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### REASON FOR GRANTING THE WRIT

The Court is presented with a question which is becoming more prevalent in every circuit; the extent in which United States Drug Enforcement Agents may rely on the Narcotics and Dangerous Drug Information System (NADDIS). In the instant case, the U.S. District Court and the U.S. Court of Appeals for the Ninth Circuit have held that information in the NADDIS computer may provide the sole corroboration for an informant's tip.

In the present case, there was no assertion that the informant had previously shown himself to be reliable. Therefore, his reliability must be questioned and the totality of the circumstances must show that the information is reliable. *Illinois v. Gates*, 462 U.S. 213 (1983).

It is submitted that by allowing information contained in NADDIS to provide the sole corroboration of an informant's tip, the lower Courts have totally departed from this Court's previous decisions.

The opinion of the lower Courts totally disregarded the standards for assessing an informant's reliability as have been set forth in the cases of *Illinois v. Gates*, 462 U.S. 213 (1983); *Spinelli v. United States*, 393 U.S. 410 (1969); *Aguilar v. Texas*, 378 U.S. 108 (1964).

The above standards mandate the court examine: (1) the informant's veracity and the basis of his knowledge; and (2) whether independent evidence corroborates the tip. It is submitted the lower Courts ignored these standards and instead relied totally upon information contained in NADDIS to uphold the informant's reliability.

The informant did not testify and no information was provided concerning his veracity. Contrary to the requirements of *United States v. Miller*, 753 F.2d 1475 (9th Cir. 1985) and *United States v. Fixen*, 780 F.2d 1434 (9th Cir. 1986), there was no evidence that the informant had any knowledge of marijuana transportation, that he was reliable, that he had any detailed knowledge of Mr. Drum's activities nor was there any information that was less than two years old. The above cases have consistently held these are crucial factors in an analysis under *Illinois v. Gates*.

Since there was no basis by which the Court could assess the informant's veracity, the issue then became whether independent evidence corroborated the tip. In *United States v. Miller*, (citing *Illinois v. Gates*; *Spinelli v. United States*; *Aguilar v. Texas*) the court recognized that

independent verification of an informant's information is very important to the finding of probable cause.

The attempts of Agent Huling to verify the information provided by the informant proved fruitless. Utility checks, drive-bys and surveillance failed to corroborate any of the information provided by the informant.

Therefore, the Court had to rely totally on the information provided by NADDIS. It is this reliance that is crucial to the issue before this Court. Agent Huling candidly testified that NADDIS is simply "intelligence information". Further, his testimony showed that at the best the information would have come from an unidentified tip and at the worst it came from the same informant as the Agent was dealing with.

The information contained in NADDIS simply cannot be used to justify a finding of probable cause. See *Illinois v. Gates*. Clearly, the vehicle could not have been stopped and searched absent a finding of probable cause. *United States v. Azhcoar*, 581 F.2d 735 (9th Cir. 1978).

In a decision after this case, the Ninth Circuit correctly ascertained that informants tips must be carefully scrutinized to safeguard a Defendant's rights. *United States v. Delgadillo-Velasquez*, 856 F.2d 1292 (9th Cir. 1988). It is urged that by relying on an information system that contains no safeguards or indicia of reliability the Court has totally disregarded all standards as set out by this Court in *Illinois v. Gates*.

It is urged that an examination of the practice of relying on information in NADDIS must be undertaken.

The failure to do so will allow the government to continue to justify warrantless searches simply by relying on undocumented "intelligence information". This practice is contrary to the Court's holding in *Illinois v. Gates* and must be addressed.

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CONCLUSION

The Petition for Writ of Certiorari should be granted.  
Dated this 18th day of July, 1989.

DAN W. MONTGOMERY  
*Attorney for Petitioner*



## APPENDIX



NOT FOR PUBLICATION  
IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNITED STATES	)	CA 87-1307
OF AMERICA,	)	
Plaintiff-Appellee,	)	DC CR 87-152-TUC-
	)	ACM
v.	)	MEMORANDUM*
WILLIAM JOSEPH DOYLE,	)	(Filed Dec. 28, 1988)
Defendant-Appellee.	)	
	)	

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Appeal from the United States District Court  
for the District of Arizona  
Alfredo C. Marquez, District Judge, Presiding

Argued and Submitted June 16, 1988  
San Francisco, California

Before: SCHROEDER and WIGGINS, Circuit Judges,  
and STEPHENS\*\*, District Judge.

William Joseph Doyle appeals the district court's determination that Drug Enforcement Administration agent Raymond Huling had probable cause to search the vehicle Doyle was driving. The district court is affirmed. Huling had reason to believe there was a fair probability that contraband was located in the vehicle.

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\*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\*Honorable Albert Lee Stephens, Jr., Senior United States District Judge for the District of Central California, sitting by designation.

### *JURISDICTIONAL STATEMENT*

Title 18 U.S.C. § 3231 confers jurisdiction on the district court because the indictment charged a violation of the laws of the United States. The Judgment of Conviction was signed on October 1, 1987, and the Notice of Appeal was timely filed on October 1, 1987. This court has jurisdiction under 28 U.S.C. § 1291.

### *FACTS*

In April of 1986, an informant contacted DEA agent Huling<sup>1</sup> with information about a "stash house" located at 2029 East Greenlee in Tucson, Arizona. The informant acquired his information in the two-year period prior to his contact with Huling during which time he was living at 2015 East Greenlee, a house next door to the stash house. He had associated with persons who lived in the stash house or frequented the premises. The informant gave the following information to agent Huling: (1) a person by the name of Johnny Drum was maintaining a stash house at 2029 East Greenlee. (2) Johnny Drum maintained a residence in San Ignacio, Mexico. (3) Johnny Drum was involved in smuggling narcotics into the U.S. and bringing marijuana and cocaine via trucks from the border. (4) Prior to 1986 Johnny Drum told him he was expecting a 20 kilo shipment of cocaine. (5) On one occasion, he had seen large wooden crates in the house. He

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<sup>1</sup> Huling had been employed by the DEA for three years; prior to that he had worked 10 1/2 years with the Texas Police Department and three years with the Texas State Board of Medical Examiners.

### App. 3

believed that the crates contained marijuana. (6) He had observed many vehicles from out-of-state, on the stash house premises; one, at least, from Montana. (7) He believed that the vehicles were involved in transporting drugs. (8) Someone once was burning a stack of large garbage bags which he believed to have once contained marijuana.

To corroborate the information, Huling ran the name Johnny Drum through the DEA's narcotics and dangerous drug information center computer (NADDIS). The computer printout showed that there was, in fact, an individual by the name of Johnny Drum who lived in San Ignacio and was involved in smuggling and transporting large quantities of marijuana and cocaine into the United States.<sup>2</sup> Also in April of 1986, a utility check on the telephone number given by the informant came back in the name of an individual previously given by the informant as being a member of the stash house. In drive-by surveillance, approximately three to four times a Chevrolet Suburban and a Mercury were observed. The Mercury, which was observed in March 1987, was registered to Johnny Drum.

There were two other sources of corroborating evidence: first, in December 1986, agents, who were surveilling known drug traffickers located in a hotel room, checked the telephone numbers called. The stash house had been called several times, although it was not known whether anyone answered the telephone. Second, in

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<sup>2</sup> Huling testified that there were three different entries into the computer but the sources of those entries were not contacted.

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December 1986 or January 1987, a different person said that Johnny Drum had shown him a quantity of marijuana available for purchase.

On April 14, 1987 a "profile load vehicle", a pickup with a camper shell, was observed at the residence. At 8:00 p.m., agents observed people loading heavy boxes into the camper. After the camper left the residence and was driving down the street, the driver and passenger kept looking back apprehensively in the rear view mirrors. The camper had Montana license plates. Huling had the Tucson police stop the camper. He opened the back of the camper and then detected the aroma of marijuana. William Doyle, the driver, and Mike Clark were then arrested. The camper contained approximately 400 pounds of marijuana.

On May 13, 1987, Doyle was indicted for possession with intent to distribute. He moved to suppress the evidence seized during the search of the camper. The district court denied the motion. Doyle then entered a conditional plea of guilty that was accepted. Doyle timely appealed the denial of his motion to suppress.

#### *ISSUE*

Did probable cause support the agent's search of the vehicle?

#### *ANALYSIS*

Doyle appeals the district court's denial of his motion to suppress the evidence obtained through the search of the camper on the ground that the agents did not have

probable cause to conduct a warrantless search because (1) the government made no showing that the informant was reliable, (2) the informant's information was not corroborated, and (3) the informant's information was stale.<sup>3</sup> Doyle's contention is without merit.

Due to an automobile's mobility, a search warrant does not need to be obtained prior to a search of the automobile. However, the search must still be supported by probable cause. *California v. Carney*, 471 U.S. 386, 394-95 (1985); *United States v. Miller*, 812 F.2d 1206, 1208 (9th Cir. 1987). Whether a search is supported by probable cause is determined by looking to the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 213, 231 (1983). Probable cause exists if "there is a fair probability that contraband or evidence of a crime will be found in a particular place." This court reviews a district court's determination of probable cause *de novo*. *United States v. Moses*, 796 F.2d 281, 283 (9th Cir. 1986) (citing *United States v. McConney*, 728 F.2d 1195, 1203 (9th Cir.) (en banc), *cert. denied*, 469 U.S. 824 (1984)).

In this case, probable cause existed to search the vehicle. The informant's knowledge was acquired through personal observation of, and association with members of, the stash house. See *United States v. Miller*, 753 F.2d 1475, 1480 (9th Cir. 1985) (look to informant's basis of knowledge). Specific pieces of information were corroborated by independent sources. See *Illinois v. Gates*,

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<sup>3</sup> Doyle also contends the "load vehicle profile" did not supply probable cause for the search. The government does not contend, however, that the search was justified on a drug courier-type profile.

462 U.S. at 241 (corroboration of details of an informant's tip through independent police work). Although Doyle contends loading boxes into a camper at night is consistent with innocent behavior, innocent behavior can become suspicious in light of other information. *Id.* at 243 n.13.

Although the informant's information was obtained over a considerable period of time, that information alone was not what established probable cause. See *United States v. Dozier*, 826 F.2d 866, 871 (9th Cir. 1987) ("The mere lapse of substantial amounts of time is not controlling in a question of staleness.") (citing *United States v. Foster*, 711 F.2d 871, 878 (9th Cir. 1983), *cert. denied*, 465 U.S. 1103 (1984)). Probable cause was established by the informant's information that had been corroborated in conjunction with what the agents observed the night of the arrest. Moreover, an important factor in the staleness analysis is the ongoing nature of the crime. *Id.* In this instance, the maintenance of a stash house was a continuing project. Therefore, with the knowledge the arresting agent had at the time, there was a "fair probability" that contraband would be found in the camper. Accordingly, the district court did not err in determining the agents had probable cause to search the vehicle.

#### CONCLUSION

The district court judgment is AFFIRMED.

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NOT FOR PUBLICATION  
IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNITED STATES	) CA 87-1307
OF AMERICA,	)
Plaintiff-Appellee,	) DC CR 87-152-TUC-
	) ACM
v.	) AMENDED
WILLIAM JOSEPH DOYLE,	) MEMORANDUM*
Defendant-Appellee.	) (Filed Mar. 15, 1989)
	)

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Appeal from the United States District Court  
for the District of Arizona

Alfredo C. Marquez, District Judge, Presiding

Argued and Submitted June 16, 1988  
San Francisco, California

Filed: December 28, 1988

Amended: MAR 15 1989

Before: SCHROEDER and WIGGINS, Circuit Judges,  
and STEPHENS\*\*, District Judge.

William Joseph Doyle appeals the district court's  
determination that Drug Enforcement Administration  
agent Raymond Huling had probable cause to search the  
vehicle Doyle was driving. The district court is affirmed.

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trict Judge for the District of Central California, sitting by  
designation.

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border. (4) Prior to 1986 Johnny Drum told him he was expecting a 20 kilo shipment of cocaine. (5) On one occasion, he had seen large wooden crates in the house. He believed that the crates contained marijuana. (6) He had observed many vehicles from out-of-state, on the stash house premises; one, at least, from Montana. (7) He believed that the vehicles were involved in transporting drugs. (8) Someone once was burning a stack of large garbage bags which he believed to have once contained marijuana.

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There were two other sources of corroborating evidence: first, in December 1986, agents, who conducting

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surveillance upon known drug traffickers located in a hotel room, checked the telephone numbers called. The stash house had been called several times, although it was not known whether anyone answered the telephone. Second, in December 1986 or January 1987, a different person said that Johnny Drum had shown him a quantity of marijuana available for purchase.

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Due to an automobile's mobility, a search warrant does not need to be obtained prior to a search of the automobile. However, the search must still be supported by probable cause. *California v. Carney*, 471 U.S. 386, 394-95 (1985); *United States v. Miller*, 812 F.2d 1206, 1208 (9th Cir. 1987). Whether a search is supported by probable cause is determined by looking to the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 213, 231 (1983). Probable cause exists if "there is a fair probability that contraband or evidence of a crime will be found in a particular place." This court reviews a district court's determination of probable cause *de novo*. *United States v. Moses*, 796 F.2d 281, 283 (9th Cir. 1986) (citing *United States v. McConney*, 728 F.2d 1195, 1203 (9th Cir.) (en banc), cert. denied, 469 U.S. 824 (1984)).

In this case, probable cause existed to search the vehicle. The informant's knowledge was acquired

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through personal observation of, and association with members of, the stash house. See *United States v. Miller*, 753 F.2d 1475, 1480 (9th Cir. 1985) (look to informant's basis of knowledge). Specific pieces of information were corroborated by independent sources. See *Illinois v. Gates*, 462 U.S. at 241 (corroboration of details of an informant's tip through independent police work). Although Doyle contends loading boxes into a camper at night is consistent with innocent behavior, innocent behavior can become suspicious in light of other information. *Id.* at 243 n.13.

Although the informant's information was obtained over a considerable period of time, that information alone was not what established probable cause. See *United States v. Dozier*, 826 F.2d 866, 871 (9th Cir. 1987) ("The mere lapse of substantial amounts of time is not controlling in a question of staleness.") (citing *United States v. Foster*, 711 F.2d 871, 878 (9th Cir. 1983), cert. denied, 465 U.S. 1103 (1984)). Probable cause was established by the informant's information that had been corroborated in conjunction with what the agents observed the night of the arrest. Moreover, an important factor in the staleness analysis is the ongoing nature of the crime. *Id.* In this instance, the maintenance of a stash house was a continuing project. Therefore, with the knowledge the arresting agent had at the time, there was a "fair probability" that contraband would be found in the camper. Accordingly, the district court did not err in determining the agents had probable cause to search the vehicle.

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*CONCLUSION*

The district court judgment is AFFIRMED.

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NOT FOR PUBLICATION  
IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

UNITED STATES	)	No. 87-1307
OF AMERICA,	)	
	)	DC# CR 87-152-TUC-
Plaintiff-Appellee,	)	ACM
	)	
v.	)	ORDER
	)	
WILLIAM JOSEPH DOYLE,	)	(Filed April 25, 1989)
	)	
Defendant-Appellee.	)	
	)	

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Before: SCHROEDER and WIGGINS, Circuit Judges,  
and STEPHENS\*, District Judge.

The panel as constituted above has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the suggestion for rehearing en banc and no judge of the court has requested a vote on the suggestion for rehearing en banc. Fed. R. App. P. 35.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

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\*Honorable Albert Lee Stephens, Jr., Senior United States District Court Judge for the District of Central California, sitting by designation.

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